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SEP 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-278

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

THEODORE RAYNOVICH,

Petitioner,

v.

ERNEST GREGG, JR.,
JOHN G. BRASKEY and
ELWOOD L. GROVES II,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS OF MARYLAND

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

H. RUSSELL SMOUSE
MELNICOVE, KAUFMAN,
WEINER, SMOUSE &
GARBIS, P.A.
600 Charles Center South
36 South Charles Street
Baltimore, MD 21201-3060
(301) 332-8581

W. DWIGHT STOVER
STOVER & SHERBIN
3 South Second Street
Oakland, MD 21550
(301) 334-9496
Attorneys for Respondents

QUESTIONS PRESENTED FOR REVIEW

I. Whether the Glen Cove Road was created by prescription, that is, use of the land by the public for highway purposes for the prescriptive period.

II. Whether the Court of Special Appeals of Maryland correctly entered and affirmed the judgment in favor of Commissioner Ernest Gregg, Jr., Commissioner John G. Braskey and Commissioner Elwood L. Groves II, constituting the County Commissioners of Garrett County, in hold Glen Cove Road to be a public thoroughfare and accepted in the county road system in 1960.

III. Whether the court of Appeals of Maryland erred in denying the

Petition of Writ for Certiorari filed by the Petitioner.

STATEMENT OF PARTIES TO THESE PROCEEDINGS

The Petitioner, Theodore Raynovich, at all relevant times, was the plaintiff and appellant below.

Commissioner Ernest Gregg, Jr., Commissioner John G. Braskey and Commissioner Elwood L. Groves II, constituting the Board of County Commissioners of Garrett County, Maryland, were the defendants and appellee in the proceeding below.

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LOWER COURT OPINIONS

The Bench Opinion of Judge Fred A. Thayer of the Circuit Court for Garrett County, Maryland has been transcribed and appears in the Appendix (App. 11a). The unanimous Per Curium opinion of Judges Wilmer, Bloom and Robert M. Bell appears in Appendix (App 3a). The Order of Chief Judge Robert C. Murphy of the Court of Appeals of Maryland appears in the Appendix (App. 1a).

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STATEMENT OF THE CASE

Theodore Raynovich filed a Petition for Writ of Mandamus against Commissioner Gregg, Commissioner Braskey

and Commissioner Groves alleging the County Commissioners of Garrett County were trespassing over his property. The County Commissioners filed a motion to dismiss, a motion for a more definite statement and a motion to strike. In response to these motions, Theodore Raynovich filed a new petition for writ of mandamus and upon hearing of the various motions, the trial court granted the motion to dismiss with leave to file an amended complaint.

The amended complaint titled "Request for Mandatory Injunction" contained a count for specific performance, injunctive relief, other relief and a count for compensatory and punitive damages. The County Commissioners filed an answer to the amended complaint denying liability and

asserting four affirmative defenses.

Theodore Raynovich withdrew his demand for punitive damages. The three remaining affirmative defenses were denied by the Court. The case proceeded to trial and testimony was taken.

The facts adduced at the trial showed Theodore Raynovich purchased a tract of land on the North side of Deep Creek Lake in Garrett County, Maryland, in 1953. This parcel of land adjoined Garrett County Route No. 22, known as the Glendale Road. The Glen Cove Road, formerly the John Luke Road, proceeds in an easterly direction from the county road, across private property owned by persons not a party to this case, then onto the property claimed by Mr. Raynovich and then to the

Beckman County Road. In response to a petition by most of the property owners living along the road, Glen Cove Road was accepted by the county on December 14, 1960, as a part of its road system.

Petitioner sold lots on both sides of the Glen Cove Road to Arthur E. Naylor and his family. He sold other lots on the Glen Cove Road to various individuals. The road is used by the various lot owners along the Glen Cove Road as access to Glendale County Road.

George F. Stuck purchased land along the Glen Cove County Road on June 5, 1954, and later purchased a strip of land from Mr. Raynovich on June 11, 1954. Mr. Stuck and others filed a petition with the County Commissioners requesting the road be taken into the

county road system. In the spring of 1961, the County rocked, tarred and chipped the road. Since that time, the County has maintained and plowed snow on the road. The Glen Cove Road was once an existing road which began on the Glendale Road, proceeded through a number of properties, and terminated at the Beckman County Road.

In May 1983 Mr. Raynovich stopped in the office of the County Commissioners requesting the name of the road be changed from John Luke Road to Glen Cove Road. In response to Mr. Raynovich's request, the name was changed. Raynovich admitted the county has maintained the road since the early 1960s.

Petitioner filed all the pleadings in the trial court and

represented himself during the trial of the case. The trial court twice advised him that the allegations contained in his amended bill did not constitute evidence and it was necessary for him to present witnesses for the court to consider as evidence. The Court advised Petitioner the documents in their present state were not sufficient and not corroborative of his allegations. The Court informed Mr. Raynovich he had the right to testify, and he then read the amended complaint into evidence.

At the conclusion of the case, the trial court held the Glen Cove Road to be a public thoroughfare, as it was taken into the county system in 1960 and had been maintained as a county road for a period of twenty-six years. The trial court further held Mr. Raynovich

has for a period of in excess of twenty years accepted the county maintenance and use and benefits from the county and it is now too late to complain. The trial court denied appellant's motion for a new trial.

Raynovich thereafter filed a timely notice of appeal to the Court of Special Appeals of Maryland. On March 26, 1987, in an unanimous Per Curium opinion Judges Wilmer, Bloom and Robert M. Bell affirmed the decision of the Circuit Court for Garrett County, Maryland in favor of the Respondents.

Raynovich thereafter filed a Petition for Writ of Certiorari in the Court of Appeals of Maryland. This petition was denied by the Court of Appeals of Maryland on July 1, 1987, as there had been no showing that review by

certiorari is desirable and in the public interest.

ARGUMENT

The Petitioner admitted the County Commissioners of Garrett County has maintained the Glen Cove Road since 1960. The County has tarred, chipped, maintained and plowed snow on the road for a period of at least twenty-six years.

The County was petitioned by most of the property owners along the Glen Cove Road to accept the road from the Glendale County Road to the east boundary of the George Stuck property into the county road system. The property of the Petitioner east of the Stuck property was not taken into the county system. However, the road continues from the eastern boundary of the Stuck property to the Beckman County

Road. The County, as a member of the public, has the right to use the road from the Stuck property to the Beckman County Road, but not to maintain it. As a member of the general public, the County has the right to use the road east of the Stuck property. The road between the western terminus of the Glen Cove Road (Glendale County Road) to the eastern Stuck boundary, is a public thoroughfare.

The Petitioner has for a period in excess of twenty years, accepted the maintenance and benefits from the county of the acceptance of the road into its system and it is too late to complain on this section of the road.

The law is well established the right to use a road may be acquired by prescription for more than twenty

years. In this case the Glen Cove Road has become public by prescription. Members of the general public have used it without let or hinderance for a period in excess of twenty-six years.

The treatise Outlines of Real Property by Tiffany, Section 317, P. 378, states: "A highway may be created . . . by prescription, that is, user of the land by the public for highway purposes for the prescriptive period."

This statement is supported and found in Antieau's Local Government Law (1987) Volume 4 Section 37.06 wherein it states: "Counties can acquire title to roads, streets and highways by prescription."

In the Restatement of Property, Section 457, it is stated that

"an easement is created by such use of land for the period of prescription . . . . "

In the case of Clayton v. Jensen, 240 Md 337, 214 A2d 154 (1965) the Court of Appeals quoted with approval from the opinion in Condry v. Laurie, 184 Md. 317, 321, 41 A2d 66, 68 (1945) as follows:

> "In order to establish an easement by prescription, it is necessary to prove an adverse, exclusive and uninterrupted use of the way for twenty years. Adverse use means use without license or permission. Where a person has used a right of way for twenty years unexplained, it is fair to presume that the use has been under a claim of right, unless it appears to have been by permission."

Petitioner sold lots on both sides of Glen Cove Road to Arthur E. Naylor and his family. In fact, the Petitioner sold many lots on the Glen

Cove Road to various individuals as access to the Glendale County Road.

This case can be distinguished from the case of Layman v. Gnegy 26 Md App 114, 337 A2d 126 (1975). In that case, the Court of Special Appeals of Maryland stated "even if we were to assume that there was a public use of the roadway, it could not become public by prescription unless its termini were public places".

According to the testimony the Glen Clove Road was once an existing road which began at some point on the Glendale County Road, went through a number of properties, and terminated at another road, the Beckman County Road. For that reason, this case can be distinguished from Layman vs. Gnegy, supra.

Section 2-114(a) of the Real Property Article of the Annotated Code of Maryland provides:

> " . . . any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor . . . in the street or highway for that portion on which it binds."

The owners of the lots have used the Glen Cove Road as access from their homes to the Glendale County Road. It is fundamentally unfair for the Petitioner to now attempt to deny his grantees and other property owners the benefit of County maintenance and County snow removal during the harsh winter months.

It is respectfully submitted the Court of Appeals of Maryland did not decide a federal question in a way in conflict with the decision of another state court of last resort or of a Federal Court of Appeals. It is also submitted the Court of Appeals of Maryland has not decided an important question of federal law which has not been, but should be, settled by this court, nor has the Court of Appeals of Maryland decided a federal question in a way in conflict with applicable decisions of this court.

The sole issue in this case is whether the County obtained title to the Glen Cove Road by prescription. The Petitioner admitted County maintenance for the prescriptive period and he should not at this late date claim

taking of property which he does not now own to the detriment of his grantees and other property owners.

CONCLUSION

For the aforegoing reasons, Respondents, Commissioner Ernest Gregg, Jr., Commissioner John G. Braskey and Commissioner Elwood L. Groves II, constituting the Board of County Commissioners of Garrett County, Maryland respectfully requests that this Honorable Court deny Petitioner's Request for Writ of Certiorari.

Respectfully submitted,

H. RUSSELL SMOUSE
MELNICOVE, KAUFMAN,
WEINER, SMOUSE &
GARBIS, P.A.
600 Charles Center South
36 South Charles Street
Baltimore, MD 21201-3060
(301) 332-8581

W. DWIGHT STOVER
STOVER & SHERBIN
3 South Second Street
Oakland, MD 21550
(301) 334-9496

Attorneys for Respondents

APPENDIX

IN THE
COURT OF APPEALS
OF MARYLAND

Petition Docket No. 128
September Term, 1987

(No. 1231, September Term, 1986
Court of Special Appeals)

THEODORE RAYNOVICH,
Plaintiff-Appellant,

v.

ERNEST GREGG, JR. et al.
Defendants-Appellees

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1231

September Term, 1986

THEODORE RAYNOVICH

v.

ERNEST GREGG, JR., ET AL.

Wilmer,
Bloom,
Bell, Robert M.,

JJ.

Per Curiam

Filed: March 26, 1987

Theodore Raynovich appeals the judgment of the Circuit Court for Garrett County denying his request that appellees, the Board of County Commissioners of Garrett County and Commissioners Ernest Gregg, Jr., John Braskey and Edward Groves, III, be enjoined from trespassing upon a certain road that Raynovich claims to own. The court determined that the road in question is part of the county road system and, therefore, denied the injunction. The court's determination not being clearly erroneous, we shall affirm.

At the outset we note that appellees have filed a motion to dismiss this appeal on the basis that the form and contents of appellant's brief fail to comply with the strictures of Rule

1031. We are sorely tempted to grant that motion because the brief is one of the worst ever filed with this Court. We recognize, however, that the brief is the product of a pro se appellant and, despite its inadequacies, we are able to discern from that brief the issue on appeal and enough facts to decide that issue. We choose, therefore, to exercise our discretion to deny appellee's motion. Rule 1035.

In 1953, appellant purchased a tract of land located on the north side of Deep Creek Lake and adjoining Garrett County Route No. 22, known as Glendale County Road. A road, formerly known as John Luke Road and now known as Glen Cove Road, traverses that tract, extending from Glendale County

road in the west to Beckman County Road in the east.

Between 1953 and 1954, appellant sold a number of lots along Glen Cove Road to various individuals, retaining a parcel of property to the east of a lot now owned by George F. Stuck. In 1960, Stuck and other owners of property along Glen Cove Road west of appellant's parcel petitioned the county to accept Glen Cove Road into the county road system. The county began paving the road shortly thereafter. Appellant testified that he was out of town when the county began to lay asphalt, but upon learning of the construction he directed his wife to prevent the county from paving beyond the beginning of his western property line. The county complied and paved only that portion of

Glen Cove Road which extends from Glendale County Road in the west to the property line appellant shares with Stuck.

The county has maintained the road since 1960. During the winters it has cleared the road of snow. Since it maintains only the western portion of the road, its snow removal efforts frequently have resulted in blocking off the unpaved portion of the road from the paved portion. As one may expect, that has led to a considerable degree of friction between appellant and the county. Appellant has sought to have the county improve and maintain the rest of Glen Cove Road, but the county has declined to do so.

Appellant filed a complaint with the Circuit Court for Garrett County seeking to enjoin the county commissioners from trespassing on Glen Cove Road.[1] We gather from his testimony below that appellant claims to own the roadbed upon which Glen Cove Road lies. Unfortunately for him, appellant acted as his own counsel before the circuit court and, being unfamiliar with court procedure, failed to adduce any evidence to support his claim of ownership beyond his own testimony, which consisted primarily of reading his complaint, without objection. The county presented several witnesses who own property along the paved portion of Glen Cove Road. Each of those witnesses testified that he had

[1]Appellant also sought compensatory damages of $90,000.

petitioned the county in 1960 to accept Glen Cove Road into the county road system and that shortly thereafter the county paved the road from Glendale County Road to appellant's property line. The petition itself was not produced, but there was evidence to the effect that the county accepted the dedication. The court held that the road was a part of the county system, thus the county was not trespassing when it cleared and maintained the road.

We are bound under rule 1086 to uphold the factual findings of the court below unless they are cleary erroneous. Based on the evidence presented, scant as it was, we cannot say that the court was clearly erroneous in holding that the paved portion of Glen Cove Road was dedicated and

accepted into the county road system in 1960. The court went further, however, and found that the county had acquired through prescription the right to utilize the entire length of Glen Cove Road as well. We need not determine whether that finding was supported by adequate evidence because it was unnecessary to the resolution of the case below and, therefore, is not before us. It is sufficient to say that the court did not err in denying the injunctive relief sought by appellant because the county has the right to use and maintain the section of Glen Cove Road that appellant sought to enjoin it from using.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

IN THE
CIRCUIT COURT
FOR
GARRETT COUNTY, MARYLAND

Civil Action No.
472

THEODORE RAYNOVICH,

Plaintiff,

vs.

ERNEST GREGG, JR., ET AL.

Defendants.

Remarks from the Bench

THE COURT: Mr. Stover, you are correct that there is no evidence of any damage before me. To begin with, Mr. Raynovich, under the circumstances of this case and nearly every other civil case, legal expenses in preparing a claim are not recoverable. That is up to the parties to pay. That may be a

defect in our system, but that is the system. If there were a trespass, I could assign nominal damages, but for reasons which will become clear in a moment, I am not going to do that.

As I have said and I now find specifically that the Glen Cove Road is, indeed, a public thoroughfare, it qualifies as such. It is clear that the county was petitioned by property owners along the Glen Cove Road, with the exception of Mr. Raynovich and perhaps some others, to accept the road into the county system at least as far east as the boundary of the George Stuck property. The road was taken into the system in 1960, and whether or not the right-of-way agreements were recorded is a matter that is not before me. I assume perhaps that that was not done.

I have some knowledge that there are rights-of-way outstanding which the county acquired and did not record. Nonetheless, the road was taken into the county system and has been maintained as a county road, at least as far east as the Stuck property, for a period of 26 years. The property owners who live along that road, including Mr. Raynovich, benefit from the county maintenance whether they asked for it or not. It is likewise clear and I so find that the property of Mr. Raynovich east of the Stuck property was not the subject of a petition nor a right-of-way for a county road in the system, and as such, it is not county road though it is a public thoroughfare from the eastern boundary of the Stuck property to Beckman County Road. Mr. Stover tells

me that the county does not maintain a claim to that portion of the Glen Cove Road as a county road. The county, however, does have the right, as a member of the public, to use that road from the Stuck property onwards to the Beckman County Road, but not to maintain it. It must be a county road to be a subject of county maintenance. It does, however, have the right, as a member of the general public and as any other member of the general public would have, to use that road.

As to the property between the western terminus of the Glen Cove Road at the Glendale County Road and extending eastward to the eastern Stuck boundary, I find that that road is in the county system and qualifies as a county road. It was so petitioned and

it was so accepted. Mr. Raynovich was not included in that petition and I gather the county has no right-of-way; nonetheless, Mr. Raynovich has for a period of in excess of 20 years accepted the county maintenance and use and the benefits from the county for the county acceptance of that into the system, and it is now too late to complain on that section of the road. I will, if it is appropriate, entertain and restrain the county from any further maintenance on the Glen Cove Road eastward from the Stuck boundary.

Mrs. Selby, I'll ask you to transcribe these remarks and I'll sign them and enter them into the record as the court's findings.

Fred A. Thayer, Chief Judge

October 1, 1986

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day of September, 1987, I mailed three copies of the Brief In Opposition To Petition For Writ of Certiorari to the Supreme Court of the United States by United States Mail, first class, postage prepaid, to Theodore Raynovich, R.F.D. 1, Box 227, Oakland, Maryland 21550, in accordance with Rule 28.3. and .5.(c).

W Dwight Stover

W. DWIGHT STOVER
STOVER & SHERBIN
3 South Second Street
Oakland, Maryland 21550
(301) 334-9496
Attorney for Respondents

Subscribed and sworn to before me this 9th day of September, 1987.

Sharon J. Wright

Sharon J. Wright
Notary Public

My Commission Expires: July 1, 1990